

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN M. EMERSON,

Plaintiff,

Case No. 1:10-cv-690

v.

Honorable Paul L. Maloney

RAYMOND INGRAHAM et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On September 7, 2010, the Court dismissed Plaintiff's action without prejudice for failure to pay the initial partial filing fee. This matter is before the Court upon Plaintiff's motion for relief from judgment brought pursuant to FED. R. CIV. P. 60(b) (docket #7).

A Rule 60(b) motion may be granted only for certain specified reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or the like; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. When none of the first five enumerated examples of Rule 60(b) apply, relief may only be available when exceptional or extraordinary circumstances are present. *Cincinnati Ins. Co. v. Byers*, 151 F.3d 574, 578 (6th Cir. 1998).

By order entered July 22, 2010 (docket #4), the Court granted Plaintiff's request to proceed *in forma pauperis* and required Plaintiff to pay an initial partial filing fee of \$13.83 pursuant to 28 U.S.C. § 1915(b)(1). The Court ordered that the initial partial filing fee be paid within 28 days, and warned Plaintiff that his case would be dismissed without prejudice should he fail to pay. On September 7, 2010, the Court dismissed Plaintiff's action without prejudice for failure to pay the initial partial filing fee.

In his motion for reconsideration and supporting documents, Plaintiff shows that the initial partial filing fee of \$13.83 was removed from his prisoner account on August 12, 2010. Plaintiff contends that the funds were lost by the Michigan Department of Corrections. Upon investigation of the allegations in Plaintiff's motion, the Court discovered that a payment of \$13.83 was received by the Clerk of the Court on August 13, 2010. However, due to a clerical error, the receipt was not docketed. Because the payment did not appear on the docket sheet, the Court was unaware that the payment had been received and erroneously dismissed Plaintiff's action. In light of the error, the Court will grant Plaintiff's motion for relief from judgment on the ground of mistake and will reopen his case for further proceedings. Therefore:

IT IS ORDERED that Plaintiff's motion for relief from judgment (docket #7) is GRANTED.

IT IS FURTHER ORDERED that the judgment is VACATED and Plaintiff's action is REOPENED for further proceedings.

Dated: October 1, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge